S.B. CIVIL WRIT PETITION NO. 3924/2005.
(ASHOK THANVI VS. RSRTC & ORS.)

DATE OF ORDER : 14.11.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Sanjeet Purohit for the petitioner/s.
Mr. Anil Bachhawat for the respondents.

By this petition for writ, a challenge is given to the order dated 03.02.2004 passed by the Executive Director (Administration) Rajasthan State Roadways Transport Corporation, Jaipur, whereby a sum of Rs.31,500/- only is ordered to be paid to the petitioner as reimbursement of the medical expenses though a sum of Rs.1,11,105/- was incurred while undergoing treatment at Bombay Hospital, Mumbai during the period commencing from 22.04.2002 to 04.05.2002.

In brief, facts of the case are that the petitioner- a Law Assistant with respondent Corporation suffered with severe brain hemorrhage on 18.04.2002, therefore, he remained as an indoor patient at M.G. Hospital, Jodhpur from 18.04.2002 to 21.04.2002. During this entire period, he was under semi-consciousness and was also under constant sedation administered by the doctors treating him. The doctors attending the petitioner looking to grave and serious nature of ailment

referred the petitioner for his treatment at SMS Hospital, Jaipur. The family members of the petitioner looking to grave threat to the petitioner's life, considered it appropriate to took him to Bombay Hospital, Mumbai for sophisticated surgery required in such ailments. It is pertinent to note that the Bombay Hospital, Mumbai is also a hospital recognized for brain surgery as per Rajasthan Civil Service (Medical Attendance) Rules, 1970. The petitioner was taken to Bombay Hospital, Mumbai on 22.04.2002 and was relieved therefrom on 04.05.2002 after undergoing a major brain surgery on 23.04.2002. In the surgery aforesaid, an expenses of Rs.1,11,105/- was incurred and the petitioner claimed for reimbursement of the same under the Rules of 1970.

The respondent Corporation by the order impugned dated 03.02.2004 allowed reimbursement of a sum of Rs.31,500/- as medical expenses against the total expenses incurred i.e. Rs.1,11,105/- on the count that the petitioner opted to get himself treated at Bombay Hospital, Mumbai without getting referred for that hospital.

While giving challenge to the decision of the Corporation under the order dated 03.02.2004, it is contended by counsel for the petitioner that the petitioner after suffering from brain hemorrhage, was not at all in a situation to opt

hospital of his choice or to move the hospital for which he was referred by the doctors of M.G. Hospital, Jodhpur and it was only because of his family members and other well wishers, he was taken to Bombay Hospital, Mumbai, where the sophisticated brain surgery is available. In view of it, according to counsel for the petitioner, there was no wrong on part of the petitioner on account of that the reimbursement of medical expenses incurred could be refused.

A reply to the writ petition has been filed on behalf of the respondents stating therein that though the petitioner was referred to SMS Hospital, Jaipur, he was taken to Bombay Hospital, Mumbai for brain surgery, therefore, he is not entitled for any amount against medical expenses reimbursement beyond the expenses cost of treatment determined by the SMS Hospital, Jaipur.

Heard counsel for the parties.

It is true that the petitioner was referred to SMS Hospital, Jaipur by the doctors treating him at M.G. Hospital, Jodhpur, but it is also the position admitted that the petitioner suffered with brain hemorrhage and from 18.04.2002 to 21.04.2002 he was under semi-consciousness with constant sedation administered by the doctors treating him. In such

circumstances, it was impossible for the petitioner to choose the hospital of his choice or to move the hospital for that he was referred by the doctors. The petitioner was taken by his family members to Bombay Hospital, Mumbai for his treatment where the services of experts is available and sophisticated surgery of brain could be made more effectively. The anxiety of the family members to get the patient treated with best available facility is quite obvious. The Hon'ble Supreme Court in the case of Surjit Singh vs. The State of Punjab observed that self preservation one's life is the necessary concomitant of the right to life enshrined under Article 21 of the Constitution of India. Thus, a right to preserve life is fundamental right.

It is the position admitted that it was not within the control of the petitioner to choose either to move SMS Hospital, Jaipur to to Bombay Hospital, Bombay. He was just under the discretion of his family members and they choose to carry him to Bombay Hospital, Mumbai, that also a recognized hospital for brain surgery. This decision was taken by them to preserve health and secure precious life of the petitioner by extending medical aid. The term medical aid in the ailments like suffered by the petitioner is mean specialized treatment and for that the Hospital where the petitioner was treated is recognized by the State. The petitioner, therefore, can not be denied medical aid

on the count that he was taken to a hospital out side the State, specially coupled with the fact that he himself at the relevant time was no body to choose the place for his treatment.

Accordingly, this petition for writ is allowed. The respondents are directed to reimburse the entire medical expenses i.e. in a tune of Rs.1,11,105/- incurred by the petitioner while undergoing treatment and brain surgery at Bombay Hospital, Mumbai, expeditiously, as far as possible within a period of two months from today.

No order to cost.

(GOVIND MATHUR)J.

Anil/